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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of:	)	
Federal-State Joint Board on Universal Service	)	CC Docket No.96-45

COMMENTS OF THE
INFORMATION TECHNOLOGY INDUSTRY COUNCIL

Fiona Branton
Director of Government Relations and
Regulatory Counsel
Information Technology Industry Council
1250 Eye Street, NW
Washington, DC 20005

(202) 737-8888

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The Information Technology Industry Council ("ITI") hereby responds to the Commission's request for comment regarding the appropriate means of defining and implementing the Federal universal support mechanisms provided for in the Telecommunications Act of 1996 (the "1996 Act").[1]

I. INTRODUCTION AND SUMMARY

ITI, formerly known as the Computer and Business Equipment Manufacturers Association ("CBEMA"), is a leading trade association of manufacturers and vendors of computers, computing devices, office equipment, and information services. As the convergence among video, consumer electronics, computing, and telephony continues, ITI anticipates that its members' products will increasingly make possible new audio, data, image, and video services.

ITI believes that competitive markets, not government regulation, will best assure consumers high quality, innovative information technology products and services at competitive prices. ITI accordingly supports the general thrust of the 1996 Act toward less regulation and more competition. Within this context, ITI believes that

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[1] FCC 96-93 (March 8, 1996) ("*Notice*").

competition in local common carriage will generate the broadest and lowest cost access to the widest variety of services. Competitive markets and open interfaces at critical locations will drive access to the affordable networks, information appliances, and information services that consumers will need to use the national information infrastructure ("NII").

Technologies are changing continually, and new, untried services are emerging. In monopolistic markets, new technologies are not always deployed. In competitive markets, however, they are rapidly deployed and implemented. It is impossible to predict with accuracy the potential uses that people will make of the NII, the services they will want, or the prices they will be willing to pay for such services in the future. The market, not regulators, accordingly is the best determinant of the range of service choices.

Indeed, regulations that do not promote competition in markets for emerging products and services will narrow consumer choices, stultify innovation, and in the long run, yield higher costs for products and services. Regulation therefore should be minimized, and any rules deemed essential to assure universal service should have the end result of promoting competition, particularly in local telephony. To this end, mechanisms created to attain a social good should be narrowly constructed so as to achieve that good with the least government intervention in the operation of the competitive marketplace.

Put simply, government policies should assure that the total universal service subsidy is the least amount necessary to assure consumers affordable access to those

essential core telecommunications services defined by law. Under the 1996 Act, the Commission is directed to promote access to information services. The Act does not establish authority for the Commission to include information services within the definition of universal service, and no additional advanced basic services currently meet the requirements of Section 254(c) to be included within universal service. In addition, the Commission should require contributions to the universal service fund only from telecommunications carriers, limit fund size to no more than its current level, and select a neutral third-party independent of service providers and federal and state regulators to administer the fund. Further, the 1996 Act directs the Commission only to enhance access to, but not to mandate the provision of, advanced telecommunications and information services for schools and libraries. Finally, as implementation of the 1996 Act by the Commission moves our nation toward a truly open competitive market in local exchange and exchange access services, the Commission should take several interim steps to remove universal service subsidies from access charges. Instead, a competitively neutral, revenue based fee should be established to fund universal service.

II. THE DEFINITION OF UNIVERSAL SERVICE SHOULD BE LIMITED TO THE CORE TELECOMMUNICATIONS SERVICES IDENTIFIED BY THE NOTICE

In passing the 1996 Act, Congress affirmed the importance of universal service as a national policy goal. ITI commends the Commission for responding to the will of Congress by proposing a definition of universal service that includes several core services: (1) voice grade access; (2) touch-tone service; (3) single-party service; (4)

911 access; and (5) operator service access.[2] These services are in accordance with the principles and criteria in Sections 254(b) and 254(c)(1), and thus should be included in Federal universal service support mechanisms.

The Commission also solicits comment, however, on whether universal service should include other services beyond this core group, such as (1) broadband services (including DS3 links, ISDN and ATM), as well as (2) information (or enhanced) services, including Internet access, voice mailboxes, electronic mail, storage and retrieval of data and images, news groups, resource location services, and information services that can be carried over the Internet.[3] Such an expansive definition of universal service would be wholly unwarranted, extremely expensive, and inconsistent with the plain language of the Act.

The Commission may expand universal service to include advanced basic telecommunications services only where such services meet the requirements of Section 254(c). None of the telecommunications services beyond the core group satisfies this standard, however. That is, none has, through the operation of market choices by customers, been subscribed to by a substantial majority of residential customers, as required by Section 254(c)(1)(B), and none has been fully deployed in public telecommunications networks by telecommunications carriers, as required by Section 254(c)(1)(C). Therefore, the Commission cannot, consistent with the 1996 Act, include

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[2] *Notice* at ¶ 16.

[3] Id. at ¶¶ 23, 57, 79-80, 91, 92, 108 & nn. 172, 174, 201.

within the definition of universal service any telecommunications services beyond the core group proposed in the *Notice*.

In contrast to telecommunications services, the Commission simply does not have the statutory authority to expand universal service support to include information services. Congress adopted a definition of universal service that does not now include, nor provide for later expansion to include, unregulated information (or enhanced) services.

Section 254(c)(1) of the Act defines universal service as "an evolving level of telecommunications services that the Commission shall establish periodically under this section taking into account advances in telecommunications and information technologies and services." (emphasis added). The Act further directs:

> The Joint Board in recommending, and the Commission in establishing, the definition of the services that are supported by Federal universal service support mechanisms shall consider the extent to which such telecommunications services--
>
> (A) are essential to education, public health, or public safety;
>
> (B) have, through the operation of market choices by customers, been subscribed to by a substantial majority of residential customers;
>
> (C) are being deployed in public telecommunications networks by telecommunications carriers; and
>
> (D) are consistent with the public interest, convenience, and necessity.[4]

Thus, the 1996 Act limits universal service to a subset of telecommunications services to be selected by the Commission and a Federal-State Joint Board.

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[4] Id. (emphasis added).

Telecommunications services do not include information services. Section 153(48) defines "telecommunications" as:

> the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.[5]

In adopting this language, Congress accepted the Senate's definition of "telecommunications."[6] The report accompanying the Senate bill unambiguously explains that the Senate's definition of "telecommunications":

> excludes those services, such as interactive games or shopping services and other services involving interaction with stored information, that are defined as information services.[7]

Section 153(51) defines "telecommunications services" as:

> the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.

Like the definition of "telecommunications," the definition of "telecommunications service" derives from the Senate bill. Once again, as the report accompanying the Senate bill explains, the definition of "telecommunications service":

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[5] This definition is similar to the definition of basic service adopted by the Commission and affirmed by the courts. See, e.g., Computer & Communications Indus. Ass'n v. FCC, 693 F.2d 198, 205 n.18 (D.C. Cir. 1982), cert. denied, 461 U.S. 938 (1983); National Ass'n of Reg. Util. Comm'rs v. FCC, 533 F.2d 601, 609-10 (D.C. Cir. 1976).

[6] See H.R. Conf. Rep. No. 458, 104th Cong., 2d Sess. 116 (1996)("The House recedes to the Senate with amendments with respect to the definition[] of . . . "telecommunications.").

[7] S. Rep. No. 23, 104th Cong., 1st Sess. 17-18 (1995)(emphasis added).

> does not include information services, cable services, or "wireless" cable services, but does include the transmission, without change in the form or content, of such services.[8]

Further evidence that Congress did not authorize the Commission to include information services directly in the definition of universal service comes from Section 254(b)(2). That section directs the Commission to promote *access* to information services -- not the actual provision of such services. *Access* to information services is best assured by promoting the deployment of adequate transmission capacity and core services to enable their use by residential and business consumers. Indeed, subjecting information services to regulation after almost twenty successful years of unregulated

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[8] H.R. Conf. Rep. No. 458, 104th Cong., 2d Sess. 18 (1996)(emphasis added). In addition to excluding information services from the definitions of "telecommunications" and "telecommunications services," Congress separately defined "information service" as:

> the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications, and includes electronic publishing, but does not include any use of any such capability for the management, control, or operation of a telecommunications system or the management of a telecommunications service.

47 U.S.C. § 153(41). This language is based on the House bill's definition of "information service," which in turn is based "on the definition used in the Modification of Final Judgment." H.R. Rep. No. 204, 104th Cong., 1st Sess. 125 (1995); see H.R. Conf. Rep. No. 458, 104th Cong., 2d Sess. 116 (1996). The Commission has repeatedly concluded that "information service," as used in the Modification of Final Judgment and as incorporated in the 1996 Act, is equivalent to "enhanced service," as defined by Section 64.702(a) of the Commission's rules. See, e.g., Amendment of Part 69 of the Commission's Rules Relating to Enhanced Service Providers, 3 FCC Rcd 2631, 2633 (1988) ("The [Modified Final Judgment] contains a restriction on BOC provision of 'information services,' a category that appears to be substantially equivalent to the Commission's regulatory category of 'enhanced services.'").

free competition would be entirely inconsistent with the fundamental deregulatory purpose of the 1996 Act. The Commission therefore should limit the definition of universal service to core "telecommunications services" proposed by the *Notice*, through which *access* to the Internet and other advanced telecommunications and information services may be promoted.

* * *

The decision by Congress not to include information service within the definition of universal service makes sense from a public policy perspective. If Congress had included information services within the definition of universal service, competition and the introduction of new services in this vibrant, still emerging market would be stultified to the detriment of consumers. Achievement of the public interest, convenience and necessity under section 254(b)(7) and section 254(c)(1)(D) would be thwarted, rather than advanced, by mandating the provision of information services under the universal service requirement. If the government is to play a role in promoting consumer *access* to information services, the most effective method would be to encourage through market oriented programs -- NOT to mandate by regulation -- access by means of basic core telecommunications services to information services by public institutions, such as libraries, community centers, local government offices, and other community locations.

III. CONTRIBUTIONS TO THE UNIVERSAL SERVICE FUND SHOULD BE COLLECTED ONLY FROM TELECOMMUNICATIONS CARRIERS, LIMITED TO NO MORE THAN EXISTING LEVELS, AND ADMINISTERED BY A NEUTRAL PARTY

There are three key issues associated with funding universal service: who contributes, how much support is required, and who should administer the fund. As discussed below, the 1996 Act and sound public policy require that the Commission compel contributions only from telecommunications carriers, limit fund size to no more than its current level, and select a neutral third-party independent of service providers and federal and state regulators to administer the fund.

Identity of Contributing Entities. Section 254(d) requires all telecommunications carriers that provide interstate telecommunications services to contribute to the universal service fund. The Commission under Section 254(d) may also compel any other "provider of interstate telecommunications" to contribute to the preservation and advancement of universal service, but only if the public interest so requires -- which it plainly does not. Any other "providers" who are connected to the PSTN fall into two categories. Some, such as leased-line private networks have already been "taxed" indirectly through rates charged by the underlying facilities provider. Requiring a further, direct contribution from such providers would be double taxation. Private networks that provide only internal communications, without PSTN interconnection, should not contribute because they serve important security, reliability, and technical needs that generally cannot be met by the PSTN, and mandatory contribution would create an unwarranted disincentive to deployment of these important capabilities. In

any event, information service providers may not be required to contribute, because Section 254(d) authorizes the Commission to require contributions only from telecommunications service providers. As explained in Section II of these comments, information services are not included within the definition of telecommunications.

Size of Fund. Congress did not intend for the Commission to expand the current level of universal service support. As explained in the Senate bill's report:

> the preservation and advancement of universal service, including the evolving definition of universal service, can be accomplished without any increase in the overall nationwide level of universal service support that occurs today.[9]

The Commission therefore should not take any steps that would increase the current size of the universal service fund, including unwarranted expansion of the scope of universal service.

Neutral Administration. The Commission should assure that the universal service fund is administered in a pro-competitive manner. To this end, the Commission should select a neutral administrator that is independent of service providers and federal and state regulators. In addition, given the requirement that all contributions must be collected under specific, predictable and sufficient mechanisms, subsidies should be separately, transparently, and explicitly stated for consumers, and should be based on the cost of providing affordable core telecommunications services to beneficiaries. Such explicit identification of subsidies will help assure full public knowledge of the extent of universal service funding and will promote effective

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[9] S. Rep. No. 23, 104th Cong., 1st Sess. 25-26 (1995).

competition in providing core telecommunications service to rural, insular, and high cost areas, as required by the 1996 Act.

IV. THE COMMISSION SHOULD ENHANCE *ACCESS* TO, NOT MANDATE THE PROVISION OF, ADVANCED TELECOMMUNICATIONS AND INFORMATION SERVICES FOR SCHOOLS AND LIBRARIES

The 1996 Act contains special provisions for health care providers, schools, and libraries. Section 254(h)(2) directs the Commission only to enhance *access* to advanced telecommunications and information services for schools and libraries. The Commission may provide this encouragement only on specific conditions: any rules established to enhance *access* must be "competitively neutral," technically feasible and economically reasonable.

Competition among telecommunications carriers, providers of advanced telecommunications services, and consumer equipment manufacturers is the most competitively neutral, technically feasible and economically reasonable means of fulfilling this Congressional direction. Competition will assure the broadest dissemination of the widest diversity of high quality services and products at affordable, market-based prices. The Commission therefore should not exercise the purchase decision for, or mandate distribution of selected products or services to, eligible schools or libraries. Any governmental intervention in the market should be confined to direct grants by federal, state and local governments to such institutions. The grants should be made directly to the eligible school or library for the sole purpose of enabling the recipient to select optimal products and services suited to local circumstances. Only in this manner can the Commission fulfill the Congressional

mandate to assure a competitively neutral enhancement program without artificially distorting the marketplace.

V. ACCESS CHARGES FOR TELECOMMUNICATIONS SERVICES SHOULD BE SET THROUGH COMPETITION

In the long term, access charges for telecommunications services should be set through competition among providers of competing services. During the transition to competition, the Commission should eliminate cross-subsidization of access services within the system, and require that access charges be separately and explicitly stated and cost-based for each telecommunications service. The Commission also should eliminate the carrier common line (CCL) charge and require a single, separately-stated, and flat subscriber charge for access to long distance service. This charge should be related strictly to the cost of the subscriber loop.

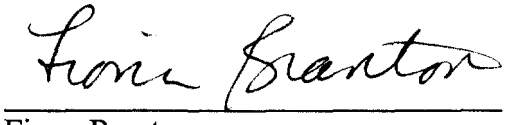
The Commission should stage the shift from cross-subsidized to cost-based rate regulation over a transition period to alleviate any rate shock concerns. As competition among local providers emerges, however, the Commission should eliminate long distance access charge rate regulation and permit local providers to compete for consumers based on subscriber line charge levels.

VI. CONCLUSION

The Telecommunications Act of 1996 seeks to provide universal service for core telecommunications services and to promote *access* to advanced telecommunication and information services. To implement the congressional mandate, the Commission should minimize regulation and adopt pro-competitive rules that promote movement away from the current local exchange monopoly environment.

Respectfully submitted,

The Information Technology Industry Council



Fiona Branton
Director of Government Relations and
Regulatory Counsel
Information Technology Industry Council

1250 Eye Street, NW
Washington, DC 20005

(202) 737-8888

April 12, 1996

CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of April, 1996, I caused copies of the foregoing "Comments Of The Information Technology Industry Council" to be hand-delivered to the following:

William F. Caton
Acting Secretary
Federal Communications Commission
Room 222
1919 M Street, N.W.
Washington, DC 20554

International Transcription Services, Inc
2100 M Street, N.W.
Suite 140
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Ernestine Creech
Common Carrier Bureau
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2000 L Street, N.W.
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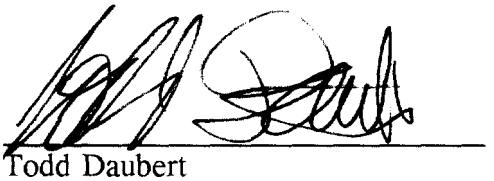

Todd Daubert